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11 UNITED STATES DISTRICT
12 FOR THE EASTERN DISTRICT OF WASHINGTON
13

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 BRICE CHRISTIAN DAVIS,

18 Defendant.

2:12-CR-00016-WFN-5

United States' Sentencing
Memorandum

19 Plaintiff, United States of America, by and through William D. Hyslop,
20 United States Attorney for the Eastern District of Washington, and Timothy J.
21 Ohms and Patrick Cashman, Assistant United States Attorneys for the Eastern
22 District of Washington, submits the following Sentencing Memorandum.

23 On September 1, 2020, Defendant entered a plea of guilty to one count of
24 Manufacture of 50 or More Marihuana Plants, in violation of 21 U.S.C.
25 § 841(a)(1), (b)(1)(C). ECF 994. Defendant's guilty plea was pursuant to a plea
26 agreement that reduced more serious charges with mandatory minimum penalties
27 that totaled fifteen years. Because Defendant possessed a firearm during the
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1 commission of the offense, Defendant did not qualify for the safety valve
2 provisions of 18 U.S.C. § 3553(f)(1)-(5) and USSG §§2D1.1(b)(18) and 5C1.2.

3 The charge-bargain contained in the plea agreement was based in part on a
4 desire to avoid sentencing disparities among other defendants who have pled guilty
5 and been sentenced in the case. Other factors relate to the amount of time that has
6 passed since the commission of the offense and its indictment, in November of
7 2011 and in February of 2012 respectively. In the interim, the complexity and
8 expense of a trial have increased due to witnesses retiring or moving from the area.
9 Changes have also occurred in both state and federal law with regard to marihuana
10 enforcement. Defendant's life has also changed in ways that mitigate the risk of
11 Defendant reoffending. Despite these changes, which have been factored into the
12 plea agreement, Defendant continues to merit conviction for the felony offense to
13 which he pled guilty and punishment consistent with the seriousness of the offense,
14 Defendant's history and characteristics, and Defendant's role in the offense in
15 relation to others. *See* 18 U.S.C. § 3553(a)(1), (2)(a), (6).

16 The offense in this case was serious. It involved the creation of a
17 commercial marihuana grow and a criminal conspiracy focused on the production
18 and distribution of marihuana from that grow. The marihuana grow was large and
19 expensive to construct and to operate. It transformed a high-end residential
20 property into a commercial property dedicated solely to the production and
21 harvesting of marihuana. Defendant was involved early in the operation and was
22 personally responsible for much of the construction necessary to create the
23 marihuana grow. This included the construction of specially designed interior
24 spaces, modifying electrical systems, and constructing two large greenhouses.
25 Defendant's history and characteristics prepared him for this work. Defendant's
26 criminal history includes a 2008 conviction for possession of a controlled
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1 substance with intent to deliver. PSR ¶ 73.¹ Defendant had also previously
2 introduced co-defendant Samuel Doyle to his (Defendant's) source of supply from
3 whom Doyle purchased approximately ten pounds of marihuana. PSR ¶ 39.

4 Although Defendant asserts that he believed that the marihuana grow was
5 intended for the production of medical marihuana in accordance with state law, this
6 statement should be viewed with skepticism. Defendant used marihuana from the
7 marihuana grow without any medical authorization or justification. In addition,
8 when the greenhouses used to grow marihuana were burglarized, police were not
9 called to investigate. Instead, co-defendant Kynaston requested Defendant to bring
10 a firearm to the marihuana grow. At the time, both Kynaston and Doyle were
11 felons and could not lawfully possess firearms. These facts, in conjunction with the
12 scale of the marihuana grow, not only increased the seriousness of the offense but
13 suggest that Washington State's medical marihuana law was being used as cover
14 for criminal conduct. Here, Defendant also had a history of illegal conduct
15 involving marihuana, and his unlawful use of marihuana continued following his
16 arrest and release from custody, resulting in a violation report filed by the United
17 States Probation Office. ECF No. 478.

18 Defendant's role in the offense and his knowledge of the scale of the
19 marihuana grow was more than that of an employee trimmer. Defendant worked
20 with co-defendants Kynaston and Doyle from early in the conspiracy—before the
21 marihuana was planted or harvested and before the spaces to grow the marihuana
22 had been constructed. Defendant personally constructed those interior grow rooms
23 and outbuildings. He personally wired them. He collected and drove employees to
24 the marihuana grow. He worked with them to harvest the marihuana. And he
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27 ¹ Citations to the PSR are to the draft PSR filed on October 28, 2020, as ECF No.
28 999.

1 escalated the seriousness of the criminal conduct and the risk of injury to law
2 enforcement and others by bringing a firearm to the marihuana grow. For these
3 reasons the government places Defendant's level of culpability below that of the
4 grow organizers (Kynaston and Doyle) but above that of an employee trimmer.

5 Kynaston was sentenced to 22 months. PSR ¶ 20. Doyle was sentenced to 16
6 months. PSR ¶ 21. The employee-trimmers have been receiving sentences of time-
7 served both with and without additional periods of supervision. PSR ¶¶ 22-24.
8 Consistent with Defendant's level of culpability, his sentence should fall between
9 the 16-month sentence imposed on co-defendant Doyle and the sentences of "time-
10 served" imposed on less culpable employees. The plea agreement anticipates this
11 by permitting the government to recommend a sentence that does not exceed 14
12 months.

13 The government will recommend a sentence within the range provided in the
14 plea agreement, but reserves its final recommendation until the sentencing hearing
15 after it has had an opportunity to review all of the materials submitted to the Court
16 and any changes to the Presentence Report.

17 Dated: November 23, 2020.

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19 William D. Hyslop
United States Attorney

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21 s/ Timothy J. Ohms
Timothy J. Ohms
22 Assistant United States Attorney

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24 s/ Patrick Cashman
Patrick Cashman
25 Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Defendant, via counsel.

s/ Timothy J. Ohms
Timothy J. Ohms
Assistant United States Attorney